

REMARKS

This paper addresses the issues raised in Paper No. 1, a first Office action issued on the 11th of March 2005. Re-examination and reconsideration are respectfully requested in view of the foregoing amendments and these remarks. Allowance of claims 1 through 11 as stated on page 4 of the Office action is noted with appreciation.

Status of the Claims

Claims 1 through 15 are pending in the application. No amendments are made to the claims by this Response.

Rejection of Claim 12 Under 35 U.S.C. §102(b)

Claim 12 was rejected under 35 U.S.C. §102(b) as anticipated by U.S. 4,769,838 to Hasegawa. Applicant traverses this rejection for the following reasons.

First, the Office action fails to make a *prima facie* showing of obviousness. In support of this rejection, the Paper No. 1 stated that,

“Hasegawa discloses a TV apparatus ... and thus discloses the claimed ‘a viewing restricting stage detecting said discretionary control data of the program received through said tuner and blocking automatic gain control signals for said tuner receiving the program when the discretionary control data is greater than the discretionary threshold.’”¹

Claim 12 defines a “video signal apparatus, comprising a tuner ... and a viewing

¹ Examiner’s Comments, Paper No. 1, page 2.

restricting stage”² The “tuner” is defined as “adjustable to selectively receive video signals representing a program of video images and *to receive discretionary control data* carried by said video signals”, and the “viewing restricting stage” is defined as “detecting said discretionary data *of the program received through said tuner*” Wholly absent from the excerpted statement taken from the Office action is any identification in Hasegawa ‘838 of Applicant’s “viewing restricting stage *detecting* said discretionary control data of the program *received* through said tuner”³ This assertion is wholly specious because, among other teachings, Hasegawa ‘838 clearly states that “the jamming signal acts on the synchronizing signals applied to the various subscribers’ TV sets and, accordingly, on the AGC levels of the sets, so as to prevent unauthorized reception of unpermitted channels.”⁴ As explained in greater detail by Hasegawa ‘838, these jamming signals are selectively applied to the designated “channels at frequencies” corresponding to the blocked channels designated, which are “scrambled by the jamming signal.”⁵ In short, and ignoring *arguendo* that Hasegawa ‘838 does not actually disclose “a tuner”, the composite of the channel signal and the jamming signal, but there is no disclosure at any stage subsequent to a “tuner” for “detecting” either a discretionary control data of the program “receive through said tuner” or for detecting “said jamming signal.” the

² Claim 12, lines 2, 5 and 6.

³ Claim 12, line 4.

⁴ Column 4, lines 50-54 which was also cited by the Examiner.

⁵ See column 6, lines 40-46.

composite signal simply overwhelms the automatic gain control of Hasegawa '838, without intervention of any stage performing detection of "discretionary control data.

Accordingly, this rejection is improper under the all elements rule. Withdrawal of the rejection and allowance of claims 1 through 6, 10 through 18, 22 through 25 and 29 through 32 is respectfully requested.

Second, Paper No. 1 inaccurately interprets the express teachings of Hasegawa '838. Claim 12 reads, *inter alia*, "a viewing restricting stage" which is defined as "detecting said discretionary data *of the program received through said tuner ...* ." Any comparable configuration taught by Hasegawa '838 must include distributors 19a, 19b illustrated for the first and second embodiments by Figures 2 and 3, respectively, and their band pass filters 40G ⁶ (in the second embodiment illustrated by Figure 3). In the both embodiments taught by Hasegawa '838, a "VCO 40⁷ is provided for generating a jamming signal"⁸ based upon data stored in RAM 30,

"generated in accordance with contracts with the individual subscribers indicating which channels are chargeable for the

⁶ See, for example, Hasagawa '838, at column 5, lines 41-46, which teaches that "a jamming signal having a level equivalent to that of the CATV signal to be jammed is produced at the output of the BPF 40G. The amplitude level of this jamming signal is maintained at a fixed ration relative to the level of the CATV signal being jammed."

⁷ Although Hasegawa '838 refers consistently to "VCO 40", Figure 3 illustrating the third embodiment shows a "VCO 40H" as a subcomponent of "VCO 40."

⁸ Hasegawa '838, column 4, lines 12 and 13.

respective subscribers.”⁹

This is the sole teaching by Hasegawa ‘838 of any stage “detecting said discretionary control data” In short, and contrary to the assertion set forth in Paper No. 1, Hasegawa ‘838 fails to teach either:

“a viewing restricting stage detecting said discretionary control data of the program received through said tuner ...”¹⁰

or,

“a tuner that is adjustable to selectively receive video signals representing a program of video images and to receive discretionary control data carried by said video signals ...”¹¹

The absence of any teaching of either feature of claim 12 by Hasegawa ‘838 conclusively establishes a lack of anticipation under 35 U.S.C. §102(b). Withdrawal of this rejection is therefore respectfully requested.

Third, the Office action fails to consider claim 12 in its entirety. In actuality, the Office action addresses not the language of claim 12, but an inaccurate and incomplete paraphrase of claim 1. In support of this rejection, the Paper No. 1 stated that,

“Hasegawa discloses a TV apparatus ... and thus discloses the claimed ‘a viewing restricting stage detecting said discretionary control data of the program received through said tuner and blocking automatic gain control signals for said tuner receiving the program when the discretionary

⁹ Hasegawa ‘838, column 4, lines 6 through 10.

¹⁰ Examiner’s Comments, Paper No. 1, page 2.

¹¹ Claim 1, lines 2 through 4.

control data is greater than the discretionary threshold.’”¹²

Wholly absent from this statement is any identification of Applicant’s “viewing restricting stage *detecting* said discretionary control data of the program *received* through said tuner”¹³ Absent all elements of claim 12, there is no anticipation. Withdrawal of this rejection is therefore respectfully requested.

Fourth, Paper No. 1 erroneously states that:

“Hasegawa discloses a TV apparatus, inherently comprising a tuner, which is adjustable ... to retrieve jamming signal or *discretionary control data* carried by video signals (see col. 4, lines 50-64. The *retrieved jamming* signals act on the AGC signals to prevent unauthorized reception of un-permitted channels (see col. 4, lines 50-64).”

This is not what Hasegawa ‘838 teaches. Not only does Hasegawa ‘838 have no *detecting stage*, but the scheme for scrambling program signals with a *jamming* signal occurs before the signal is applied to the drop lines 20a ... 20j of the subscribers and thus, before the signal is received by the *TV apparatus*. Moreover, the jamming signal for each channel to be scrambled is frequency specific, with each:

“jamming signal having a level equivalent to that of the CATV signal to be jammed is produced at the output of the BPF 40G. The amplitude level of this jamming signal is maintained at a fixed ratio relative to the level of the

¹² Examiner’s Comments, Paper No. 1, page 2.

¹³ Claim 12, line 4.

CATV signal being jammed.”¹⁴

What function does a *detecting stage* serve in Hasegawa ‘838 if a program signal is already jammed prior to reception by the television set? Precisely what function would a *detecting stage* serve in Hasegawa ‘838 if the jamming signal has an amplitude set a fixed ratio? Inherence does not remedy an absence of structure, function and result in the prior art. Moreover, inherence aside, exactly where among the teachings of Hasegawa ‘838 is any detection of a jamming signal taught? Clarification under 37 CFR §1.104(c)(2) is respectfully requested. Furthermore, there is no evidence of record, and no *prima facie* showing, that Hasegawa ‘838 teaches Applicant’s:

“viewing restricting stage detecting said discretionary control data of the program received through said tuner *and* blocking automatic gain control signals”¹⁵

Hasegawa ‘838 is a CATV distribution system that applies either a fully scrambled signal or a program signal, but nothing else, to the drop lines 20a ... 20j. Nowhere does Hasegawa ‘838 suggest that signals *received through said tuner* are either detected or are blocked;¹⁶ in other words, any signals applied to a subscriber’s television set other than an unscrambled program, is already “scrambled by the jamming signal”,¹⁷ and is not

¹⁴ Hasegawa ‘838, col 5, lines 41-46.

¹⁵ Claim 12, lines 5 and 6.

¹⁶ According to Hasegawa ‘838, the program signals are “*scrambled* by the jamming signal.” Column 6, lines 45 and 46.

¹⁷ Hasegawa ‘838, column 6, lines 45 and 46.

subsequently in the practice of Hasegawa '838, either blocked, jammed or scrambled. Hasegawa '838 fails therefore, to make a *prima facie* showing of obviousness.

Fifth, the Examiner has incorrectly asserted that Hasagawa '838 "tuner" which is "adjustable to selectively receive television programming"¹⁸ and a "viewing restricting stage *detecting* said discretionary data *of the program received through said tuner ...* ." This assertion contains the exact language of Applicant's claim 12. Despite a thorough reading of Hasagawa '838, the exact language of Applicant's claim 12 is absent from the text of Hasagawa '838.¹⁹ The completeness mandated by 37 C.F.R. §1.104(a)(b) and (c) is not provided by the Examiner's explanation of Hasagawa '838. Clarification is respectfully requested. By way of example, the Examiner is respectfully requested to explain pursuant to 37 CFR §1.104(c)(2) precisely which portion of Hasagawa '838 teaches and stage "stage *detecting* said discretionary data *of the program received through said tuner ...* ." Additionally, the Examiner is also requested to identify precisely where Hasagawa '838 teaches any "tuner." The Examiner's citation of column 4, lines 50

¹⁸ In contradistinction, claim 12 reads "a tuner that is adjustable to selectively receive television programming" video signals representing a program of video images **and** to receive discretionary control data carried by said video signals"

¹⁹ *Detecting stages* are components that are well known to electrical engineers for use in the art of television receiver design. Unexplained in Paper No. 1 however, is how Hasegawa '838 can be read to teach a "stage" that is designed to perform a function of "detecting ... data" if Hasegawa '838 does not use these words, and if, as taught by Figure 5 of Hasegawa '838, the frequency – voltage product is constant in magnitude for each blocked channel?

through 64 of Hasagawa '838 discusses the effect of the "jamming signals" on the horizontal synchronization of the set and the effect of the "jamming signals" on automatic gain control. Moreover, Hasagawa '838 never uses the verb "detecting" to describe the operation of a subscriber's "TV set", and in effect, the Examiner has mislabeled the structure of Hasagawa '838 in an effort to demonstrate anticipation. Under 35 U.S.C. § 102, it is error to assume that two structures are the same or equivalent simply because they perform the same function. The Federal Circuit has held it error to assume that two structures are the same or equivalent simply because they perform the same function.²⁰ *Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1126-27 (Fed. Cir. 1996); *Pennwalt Corp. v. Durand-Wayland, Inc.*, 833 F.2d 931, 934 (Fed. Cir. 1987) (en banc) ("Pennwalt erroneously argues that, if an accused structure performs the function required by the claim, it is per se structurally equivalent"), *cert. denied*, 485 U.S. 961 (1988). Infringement (or anticipation) is found only if the claimed function is performed by either the same structure (or acts) that the specification describes or else by an equivalent of the structure (or acts). *Texas Instruments Inc. v. United States Int'l Trade Comm'n*, 805 F.2d 1558, 1562, 231 USPQ 833, 834-35 (Fed. Cir. 1986). Consequently, this rejection is improper and should be withdrawn. Such action is respectfully requested.

²⁰ Here, unlike *Pennwalt*, there is no evidence of record of *prima facie* showing that Hasegawa '838 teaches a "viewing restricting stage detecting said discretionary control data of the program received through said tuner *and* blocking automatic gain control signals" Hasegawa '838 receives either a fully scrambled signal or a program signal, but nothing else.

Rejection of Claims 14 and 15 Under 35 U.S.C. §103(a)

Claims 14 and 15 are rejected under 35 U.S.C. §103(a) as rendered obvious over Hasegawa '838. For the reasons stated above and the fact that Hasegawa '838 discloses no TV set with more than a single tuner, claims 14 and 15 are patentable over the cited prior art. Accordingly, withdrawal of the rejection of claims 14 and 15 under 35 U.S.C. §103 is respectfully requested.

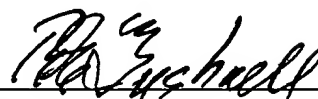
Allowable Subject Matter

Claims 1 through 11 are allowed. Claim 13 is objected to as being dependent upon a rejected base claim, but the Examiner stated that claim 13 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In view of the above, it is submitted that the claims of this application are in condition for allowance, and early issuance thereof is solicited. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

No fee is incurred by this Response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. E. Bushnell", written over a horizontal line.

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